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ALLEN CARTER

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALLEN CARTER, Individually and On) **Case No. 2:16-cv-1399**
Behalf of All Others Similarly Situated,)

Plaintiff,) **CLASS ACTION COMPLAINT**
) **FOR DAMAGES AND DEMAND**
) **FOR JURY TRIAL**

vs.)

MOLINA HEALTHCARE OF)
CALIFORNIA,)
Defendant.)

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of MOLINA HEALTHCARE OF
5 CALIFORNIA (“Defendant”), in negligently, knowingly, and/or willfully
6 contacting on Plaintiff’s cellular telephone in violation of the Telephone Consumer
7 Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s
8 privacy.

9 **JURISDICTION & VENUE**

10 2. Jurisdiction is proper as Plaintiff seeks redress under a federal statute,
11 thus this Court has jurisdiction as this matter involves questions of federal law.

12 3. Venue is proper in the United States District Court for the Central
13 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
14 because Defendant does business within the state of California and the Central
15 District of California and Plaintiff resides within this district.

16 **PARTIES**

17 4. Plaintiff, Allen Carter (“Plaintiff”), is a natural person residing Grand
18 Terrace, San Bernardino County, California and is a “person” as defined by 47
19 U.S.C. § 153 (10).

20 5. Defendant, MOLINA HEALTHCARE OF CALIFORNIA
21 (“Defendant”), is a managed care company with its state of incorporation and its
22 corporate headquarters in Long Beach, Los Angeles County, California and is a
23 “person” as defined by 47 U.S.C. § 153 (10).

24 **FACTUAL ALLEGATIONS**

25 6. In or around November of 2015, Defendant placed numerous
26 telephone calls to Plaintiff’s cellular telephone number ending in 5901, which
27 Plaintiff has possessed exclusively for more than four (4) years.

28 7. On numerous occasions when Plaintiff failed to answer Defendant’s

1 calls, including but not limited to November 20, 2015 at 1:54 p.m., Defendant
2 placed the following pre-recorded and/or artificial voicemail message for Plaintiff:

3
4 Hello, this is Molina Health Care calling with important
5 medical coverage information about a Molina member.
6 Please have a parent or guardian of the Molina member
7 call our retention unit at 1-866-440-3192, Monday through
8 Friday from 6 a.m. to 5 P.M. Pacific Standard Time. Please
9 you have a nice day.”

10
11 8. Defendant used an “automatic telephone dialing system,” as defined
12 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff.

13 9. Defendant used an artificial or prerecorded voice to place its calls to
14 Plaintiff.

15 10. The voicemail messages Plaintiff received were created using a pre-
16 recorded and/or artificial voice. As it is highly unlikely that Defendant’s
17 representative manually dialed Plaintiff’s telephone number and subsequently
18 placed a prerecorded message when Plaintiff did not answer, Defendant’s use of an
19 artificial or prerecorded message indicates that Defendant’s call was placed with
20 an automatic telephone dialing system.

21 11. Defendant’s calls constituted calls that were not for emergency
22 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

23 12. Defendant’s calls were placed to a telephone number assigned to a
24 cellular telephone service for which Plaintiff incurs a charge for incoming calls
25 pursuant to 47 U.S.C. § 227(b)(1).

26 13. Plaintiff has no business relationship with Defendant whatsoever and
27 never provided Defendant with his cellular telephone number for any purpose.
28 Accordingly, Defendant did not have Plaintiff’s “prior express consent” to receive
calls using an automatic telephone dialing system and/or prerecorded or artificial
voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

14. Plaintiff brings this action on behalf of himself and all others similarly situated, as a member of the proposed class (hereafter “The Class”) defined as follows:

All persons within the United States who received any telephone calls from Defendant or Defendant’s agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system and/or artificial or prerecorded voice within the four years prior to the filing of this Complaint

15. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any telephone calls from Defendant or Defendant’s agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system and/or artificial or prerecorded voice within the four years prior to the filing of this Complaint.

16. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

17. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

18. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their cellular telephones thereby causing Plaintiff and Class

1 members to incur certain charges or reduced telephone time for which Plaintiff and
2 Class members had previously paid by having to retrieve or administer messages
3 left by Defendant during those illegal calls, and invading the privacy of said
4 Plaintiff and Class members.

5 19. Common questions of fact and law exist as to all members of The
6 Class which predominate over any questions affecting only individual members of
7 The Class. These common legal and factual questions, which do not vary between
8 Class members, and which may be determined without reference to the individual
9 circumstances of any Class members, include, but are not limited to, the following:

- 10 a. Whether, within the four years prior to the filing of this
11 Complaint, Defendant made any telephone call (other than a call made
12 for emergency purposes or made with the prior express consent of the
13 called party) to a Class member using any automatic telephone dialing
14 system and/or artificial or prerecorded voice to any telephone number
15 assigned to a cellular telephone service;
- 16 b. Whether Plaintiff and the Class members were damaged
17 thereby, and the extent of damages for such violation; and
- 18 c. Whether Defendant should be enjoined from engaging in such
19 conduct in the future.

20 20. As a person that received a call from Defendant using an automatic
21 telephone dialing system and/or prerecorded or artificial voice without Plaintiff's
22 prior express consent, Plaintiff is asserting claims that are typical of The Class.

23 21. Plaintiff will fairly and adequately protect the interests of the members
24 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
25 class actions.

26 22. A class action is superior to other available methods of fair and
27 efficient adjudication of this controversy, since individual litigation of the claims
28 of all Class members is impracticable. Even if every Class member could afford

1 individual litigation, the court system could not. It would be unduly burdensome
2 to the courts in which individual litigation of numerous issues would proceed.
3 Individualized litigation would also present the potential for varying, inconsistent,
4 or contradictory judgments and would magnify the delay and expense to all parties
5 and to the court system resulting from multiple trials of the same complex factual
6 issues. By contrast, the conduct of this action as a class action presents fewer
7 management difficulties, conserves the resources of the parties and of the court
8 system, and protects the rights of each Class member.

9 23. The prosecution of separate actions by individual Class members
10 would create a risk of adjudications with respect to them that would, as a practical
11 matter, be dispositive of the interests of the other Class members not parties to such
12 adjudications or that would substantially impair or impede the ability of such non-
13 party Class members to protect their interests.

14 24. Defendant has acted or refused to act in respects generally applicable
15 to The Class, thereby making appropriate final and injunctive relief with regard to
16 the members of the California Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **Negligent Violations of the Telephone Consumer Protection Act,** 19 **47 U.S.C. §227 et seq.**

20 25. Plaintiff repeats and incorporates by reference into this cause of action
21 the allegations set forth above at Paragraphs 1-24.

22 26. The foregoing acts and omissions of Defendant constitute numerous
23 and multiple negligent violations of the TCPA, including but not limited to each
24 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

25 27. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
26 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
27 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

28 28. Plaintiff and the Class members are also entitled to and seek injunctive

1 relief prohibiting such conduct in the future.

2 **SECOND CAUSE OF ACTION**
3 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
4 **Act**

47 U.S.C. §227 et seq.

5 29. Plaintiff repeats and incorporates by reference into this cause of action
6 the allegations set forth above at Paragraphs 1-28.

7 30. The foregoing acts and omissions of Defendant constitute numerous
8 and multiple knowing and/or willful violations of the TCPA, including but not
9 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et
10 seq.

11 31. As a result of Defendant's knowing and/or willful violations of 47
12 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of
13 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
14 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

15 32. Plaintiff and the Class members are also entitled to and seek injunctive
16 relief prohibiting such conduct in the future.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

19 **FIRST CAUSE OF ACTION**

20 **Negligent Violations of the Telephone Consumer Protection Act**

21 47 U.S.C. §227 et seq.

- 22 • As a result of Defendant's negligent violations of 47 U.S.C.
23 §227(b)(1), Plaintiff and the Class members are entitled to and
24 request \$500 in statutory damages, for each and every violation,
25 pursuant to 47 U.S.C. 227(b)(3)(B).
26 • Injunctive relief.
27 • Any and all other relief that the Court deems just and proper.
28

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Injunctive relief.
- Any and all other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff demands a trial by jury in this action.

Date: February 29, 2016

WESTGATE LAW

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